UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL BLAKEMAN,

Plaintiff,

AFFIRMATION IN SUPPORT OF PLAINTIFF'S MOTION

V.

RICHARD BLAKEMAN,

Defendant.

Case No.: 13-cv-07348-LTS

JUSTIN MERCER, an attorney admitted to practice law before the courts of the State of New York, affirms the following to be true pursuant to Section 2106 of the New York Civil Practice Laws and Rules ("CPLR") and under the penalties of perjury:

- 1. I am an associate with the law firm Lewis & Lin LLC, attorneys for Plaintiff RACHEL BLAKEMAN ("Plaintiff").
- 2. I am familiar with the facts and circumstances of the instant action based upon records and files maintained by this office and upon Plaintiff's statements.
- 3. I submit this affirmation in support of Plaintiff's motion for sanctions pursuant to Rule 11, 28 U.S.C. § 1927, and the Court's inherent power.
- 4. A true and correct copy of an excerpt from the transcript of the hearing dated March 5, 2012 before Hon. Ellen Gesmer of the New York State Supreme Court is annexed hereto as **Exhibit A**.
- 5. A true and correct copy of the letter dated December 16, 2013 from Defendant's counsel, attaching a copy of the Police Report dated February 15, 2012, is annexed hereto as **Exhibit B**.
- 6. A true and correct copy of the letter dated December 18, 2013 from Plaintiff's counsel that attaches the February 2, 2012 email from Defendant's matrimonial

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counsel, Alex Potruch, Esq., to Plaintiff's matrimonial counsel, Marian Shelton, Esq. and the police report dated February 14, 2012 is annexed hereto as **Exhibit C**.

Dated: Brooklyn, New York

January 7, 2014

JUSTIN MERCER

Exhibit A

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2	SUPREME COURT OF THE STATE OF NEW YORK
3	NEW YORK COUNTY: CIVIL TERM: PART 24
4	DACHEL DIAKEMAN
5	RACHEL BLAKEMAN, : Index No. 302293/12
6	Plaintiff(s).
7	-against- :
8	RICHARD BLAKEMAN, :
9	Defendant(s). :
10	71 Thomas Street New York, New York 10013
11	March 5, 2012
12	BEFORE:
13	THE HONORABLE ELLEN GESMER, Justice
14	APPEARANCES:
15	MARIAN R. SHELTON, ESQ. Attorney for the Plaintiff
16	575 Lexington Avenue 4th Floor New York, NY 10022
17	ALEXANDER POTRUCH LLC
18	Attorneys for the Defendant 666 Old Country Road Suite 700
19	Garden City, NY 11530 By: ALEXANDER POTRUCH, ESQ.
20	
21	JEANETTE LAKE-MASON, CSR, RMR
22	Official Court Reporter
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Proceedings

MR. POTRUCH: Thank you for listening, your Honor. I've completed my summation.

THE COURT: Okay.

I find that Ms. Blakeman's testimony was very credible; and I find, regrettably, that Mr. Blakeman's testimony was not credible. Accordingly, I find that Mr. Blakeman has engaged in a constant and continuing pattern of yelling at Mrs. Blakeman, berating her both in person and in front of the children, and threatening her; and also that he has refused to leave her to give her any peace in the apartment; and has on several occasions picked a lock of the room where he was -- where she was and entered that room, despite her request that he not do so.

I also find that he accessed her computer without her permission and deleted files from her computer without her permission; and that he accessed mail directed to her, including mail containing medications, and took that without her permission.

Based on that, I find that Mr. Blakeman committed family offenses, including, but not limited to harassment in the second degree, Penal Law section 240.26 subdivision 3, criminal mischief in the fourth degree. Therefore, I find there's a sufficient basis for entering an order of protection against him, and I do so for a period of one year.

JEANETTE LAKE-MASON, CSR, RMR, Official Court Reporter

Proceedings

This is a complete stay away with a carve-out for any access time pursuant to an order of this Court or by agreement of the parties. I would hope that the parties can agree on an access schedule, and I'll be happy to so order it.

If there was any lack of clarity in my previous order that made Mr. Blakeman uncomfortable with exercising his access last weekend, that's regrettable and was not my intention; but the permanent order will include a specific carve-out for any agreement with regard to access to the children, which I certainly expect he will have.

However, I must caution Mr. Blakeman that it's really critical that he not say anything negative about Mrs. Blakeman to the children, just as I expect Mrs. Blakeman will not say anything negative about him to the children. But if either party were to say negative things about each other to the children, that would certainly have a major impact on any ultimate access arrangement I will order.

I suggest that you might find it helpful to consult with a mental health professional with regard to how to explain this to the children. Apparently, that has not been done sufficiently.

So we need a date to come back to court to proceed further. Unfortunately, because of the time I'm JEANETTE LAKE-MASON, CSR, RMR, Official Court Reporter

1	Proceedings
2	going to have to have I'm going to direct
3	counsel I'm going to, unfortunately, have to have the
4	parties step out. I am going to direct counsel to serve
5	the order of protection on his client.
6	MR. POTRUCH: Oh, no problem, your Honor.
7	THE COURT: So would the parties step out, and
8	counsel can stay and we'll figure out what to do next.
9	Counsel, why don't you step up and see if we can
10	figure out a schedule.
11	MS. SHELTON: Did you say to step up, your Honor
12	THE COURT: Yes.
13	(Whereupon, the matter concluded)
14	* * *
15	CERTIFICATE
16	This is certified to be a true and accurate
17	transcription of the stenographic minutes taken in the
18	above proceedings.
19	JEANETTE LAKE-MASON, CSR, RMR
20	Official Court Reporter
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Exhibit B

ALAN M. NELSON

ATTORNEY AT LAW

3000 MARCUS AVENUE, SUITE 1E5 LAKE SUCCESS, NEW YORK 11042 TELEPHONE: (516) 328-6200 FAX: (516) 328-6354 E-mail: anelsonlaw@aol.com

NEW YORK OFFICE: 111 JOHN STREET SUITE 640 NEW YORK, NY 10038

December 16, 2013

BY U.S. & ELECTRONIC MAIL

Justin Mercer, Esq. Lewis & Lin, LLC 45 Main Street, Suite 608 Brooklyn, N.Y. 11201

Re: Rachel Blakeman v. Richard Blakeman 13-cv-07348 (LTS)

Dear Mr. Mercer:

Please accept this correspondence as a response to your e-mail of December 6, 2013. By that correspondence and in our follow-up discussions you, on behalf of your client, have threatened that if Richard Blakeman does not "withdraw the counterclaim and certain baseless denials contained within the Answer" that you shall file a proposed motion pursuant to Rule 11 of the Fed. Rules of Civil Procedure seeking sanctions and attorney fees.

As I have informed you, the defendant will not withdraw his counterclaim. A factual basis for the counter-claim has at all times relevant existed. As I have previously informed you, Richard Blakeman filed a Domestic Incident Report with the New York City Police Department on February 16, 2012. In that report Mr. Blakeman alleged that on February 7, 2012 he "noticed that my personal non-shared computer had been accessed". When he confronted your client, Rachel Blakeman, she "did not deny it". Mr. Blakeman further reported that upon closer inspection of his personal computer he realized that Rachel Blakeman downloaded and deleted files on his personal computer, which downloaded files included "confidential attorney-client" and "doctor-patient privileged documents".

As we discussed the report was filed with New York City Police Department by Mr. Blakeman on February 16, 2012, a full year before his Examination Before Trial in the matrimonial action where the allegation of his improperly accessing Rachel Blakeman's computer and e-mail accounts was first asserted. Moreover, the report was filed more than 20 months prior to the allegations Rachel Blakeman raises in the instant complaint.

Rule 11(b)(3) of the Fed. Rules of Civil Procedure requires that counsel conduct a reasonable inquiry under the circumstances of whether factual contentions made in a pleading have evidentiary support, or will likely have evidentiary support.

Justin Mercer, Esq. December 16, 2013 Page 2

The existence of a sworn statement of fact, filed with the New York City Police Department, close to year prior to any allegations of wrongdoing made by your client, clearly comports with and fully satisfies the requirement of reasonable inquiry set forth in Rule 11. Indeed, as discovery will reveal the defendant possesses evidentiary support to demonstrate what materials were improperly downloaded.

I have enclosed a copy of the Police Report for you and your client's review. (See Exhibit "A"). Having now been provided with the report, you and your client on clear notice that the demand to withdraw the counter-claim because it lacks any evidentiary support is without merit. Therefore by proceeding upon the motion you will be in violation of Rule 11(b)(1) the motion being "presented for an improper purpose, such as harass... or needlessly increase the cost of litigation, (2) because the defendant's claims "are warranted by existing law" and (3) "the factual allegations have evidentiary support".

Were you to proceed with the threatened motion we shall cross-move pursuant to Rule 11 and seek appropriate attorney fees, pursuant to Rule 11(c)(2). You have been placed on actual notice that the allegations contained in the counter-claim have a factual basis that precedes any motive to fabricate.

With respect to you complaints concerning the contents of $\P \P 35$ and 38 of the defendant's answer, we are prepared to discuss the modification of the answer to $\P 35$.

Kindly advise as to your position at your earliest possible convenience so as to avoid the necessity for the applications discussed herein.

Alan Nelson

enclosure

cc: Richard Blakeman

EXHIBIT "A"

Agency NY DYC	ese 1:13-cv-07348-	LTS Document		Mage Ay2001	19 Incident #
Month Day Yes	Time (24 hrs) Address of Occurren		AP	Precinct over Aided	# (NYC) Complaint #
2 15 13	1130 401	EMST	8	F CTV	Compraint #
2/16/12	1049			O Officer-Initiated	O Radio Run Walk-In
Name (Last, First, M.L.) / (in the	Blakeman	District	L	T T Mara	Pry / You Age DM
				If non-English,	4 0F.
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Street & City	DIGKengar	1 Kachel	212472	9/08 8 4 3	0 69 DF.
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		Removed to Hospital'	White O Black O A		DV History? Yes ON
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	have they lived together in the p parties have a child-in-common	- U Chil	mate Partner/Dating O Form d of victim/party 1 O Paren	t of victim/party 1 Suspe	ct: Drug/Alc History? O Yes X N ct: Hx:suicide threat? O Yes X N
		? O Yes O No O Rela	tivesO Other	Suspe	ct: Probetion/Parole? O Yes ON
(Check all that apply)	O Impaired Alcohol/Drugs	Owner			
O Biting O Destroyed Property	O Injury to Child	O Sexual Assault	O Threw Items O Unwanted Contact	O Threats: (specify) O Injure/Kill Persons	O Threat with weapon
(Estimated \$ O Forced Entry	O Injury to Other Persons O Injury to Pet/Animal	O Slapping	O Verbal Abuse O Violated Visitation/	O Injure/Kill Self O Injure/Kill Pet/Anim	O Weapons used: (specify)
O Forcible Restraint O Hair Pulling	O Interference with Phone O Intimidation/Coercion	O Slamming Body O Stabbing	Custody Conditions	O Take Child	OGUI
			OTHER Suspect Actions:	0.0	
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Case 1:13 Complete TS Document 11 Precinct avec TV Aided # (NYC) Complaint # Precinct O1/07/14 Page 13 of 19
Page 2 of the NYS Domestic Incident Report: STATEMENT OF ALLEGATIONS / SUPPORTING DEPOSITION
Suspect Name (East, First, M.I.) Laved Haleran
1, Richer Blakemen (victim/deponent name), state that on 2/7/12, (date) at 6.30 pm. Yo, (nombre de victima/deponente), declaro que en tal fecha / / en
(location of incident), in the County/City/Town/Village of, of the state of New York, the following did occur: (donde el incidente ocurrio), el condado/ciudad/aldea/pueblo de, del estado de Nueva York, lo siguiente occurio:
When I came home on the evening of Feb 7 after picking up my daughter
Sudney From From Hebrew School, I noticed that my parsonal
non Shared computer had been cecessed Illegallania
peutle things but I confronted my wife and She did not deny it.
After Tuesday's night incident Ittack a much closer Took at what
files were downbaded and deleted. I now realize that she
dow Mooded confidential Attorney client privileged documents
and lactor patient accuments, the constant sometimes but
I think some files have been deleted but I am unsure
which ones at this time.
7/15/12
She took Jewelry and my watch
from a Shared Safe
(Use additional pages as needed)
False Statements made herein are punishable as a Class A Misdemeanor, pursuant to section 210.45 of the Penal Law.
Declaraciones falsas hechas aqui son castigables como una clase de delito menor, de acuerdo con la seccion 210.45 de la
ley penal. 2/16/12 Whether on hot the formal.
Westing Denomination Date Signed Mis DIR form will be
Firma de victima deponente Fecha filea with lawenforcement.
Interpreter Date Si esta forma esta firmada e
Interpreter no, esta DIR forma sera region - traca con ja policia.
Witness of Office Date
Witness of Officer
VICTIM / COMPLAIN ANT COPV NYS DOMESTIC VIOLENCE HOTLINE ENGLISH: 1-800-942-6906 SPANISH: 1-800-942-6908 3221-02/2010 DCJS Copyright © 2008 by NYS

Exhibit C

Case 1:13-cv-07348-LTS Document 11 Filed 01/07/14 Page 15 of 19

LEWIS & LIN LLC

45 Main Street, Suite 608 Brooklyn, NY 11201-8200 >>>Tel: (718) 243-9323 >>>Fax: (718) 243-9326

www.ilawco.com

December 18, 2013

VIA EMAIL AND US MAIL

Alan Nelson, Esq.
3000 Marcus Avenue, Suite 1E5
Lake Success, NY 11042
Tel.: (516) 328-6200
Email: anelsonlaw@aol.com

Blakeman v. Blakeman (Case No.: 13-cv-07348-LTS)

Dear Mr. Nelson:

I am writing in response to your letter dated December 16, 2013, in which you decline to withdraw the counterclaims and attach a copy of a police report, which you contend provides evidentiary support for those counterclaims.

As a preliminary matter, the entire factual basis for the counterclaims are self-serving allegations made in a police report, which allegations are not corroborated by any credible evidence. The above statement does not allege the use of spyware, or the interception of emails. The above allegations were also curiously omitted from the police report that your client filed on February 14, 2012, in which he falsely reported that Ms. Blakeman had stolen his watch. See attached. These spurious claims fail to support a cause of action under the Wiretap Act or the Stored Communications Act.

If the above were not enough, the enclosed email dated February 2, 2012 from your client's matrimonial counsel, Alex Potruch, Esq., to Rachel Blakeman's matrimonial counsel, Marian Shelton, Esq., undermines any factual basis for the counterclaims. That email, which is dated five days before the date on which your client swore that Ms. Blakeman accessed his "personal non shared computer," concedes that the allegedly downloaded files were "easily accessible." Moreover, Mr. Blakeman's own attorney did not then allege that the computer in question was your client's non-shared *personal* computer, as alleged in the counterclaim. Again, there were no allegations of spyware or intercepting email communications.

It is also noteworthy that Mr. Blakeman filed a police report accusing Ms. Blakeman of downloading files from his computer only after he had *twice* been caught intercepting Ms. Blakeman's emails and forwarding them to his account. Combined with your client's deposition testimony, first denying, then admitting his use of spyware to intercept and download our client's email communications, and the Supreme Court's finding that your client's testimony was not credible in issuing a protective order, more than naked reliance on a self-serving police report, which does not even allege facts that support a cause of action under the counterclaims asserted, is necessary to provide a factual basis for the counterclaims.

We strenuously disagree that our motion is being advanced for an improper purpose. No degree of zealous advocacy can justify reliance on the self-serving, non-corroborated statements of a defendant

who has already perjured himself in a related matter, and whose testimony has been found by at least one court to lack credibility. We respectfully request that you re-think your response to our draft motion. Should your client not withdraw all of his counterclaims by no later than December 27, 2013, we will move for Rule 11 sanctions.

Finally, we are available to discuss the above, as well as the answers to paragraphs 35, 38, 48-50, 68-69 and 79, as referenced in our draft motion, at your convenience.

Regards,

Justin Mercer, Esq.

From: Alex Potruch <ap@potruch.com>

To: mrsheltonlaw <mrsheltonlaw@aol.com>

Subject: Blakeman

Date: Thu, Feb 2, 2012 4:55 pm

Marian,

I was distressed to read your email.

Richard has told me that the situation in the house is tense but there is no denigration of each other especially in front of the children.

Your client, as you know, removed files from the computer which were confidential in nature (but easily accessible). I am not critical but what I don't like is that she taunts him on a daily basis; i.e.; "you're gonna be out of here soon...", etc.

He did set up a direct deposit for the insurance and made the payment. This disability policy is paid monthly but was delayed since the doctor did not send the forms. That was finally done yesterday. There will be no change of the status quo. Richard asked Rachel what bills are due since he does not access the joint bank account. He will pay $\frac{1}{2}$ of the bills as they become due.

I will not barrage you with his description of what has transpired from his vantage point in the recent post. The important thing is that I will you know, speak to him (as you will to her) about keeping everything civil- including giving each other some space.

I will speak to you later.

Regards,

Alexander Potruch 666 Old Country Road Suite 555 Garden City, New York 11530 516-739-3737 (p) 516-739-3833 (f) ap@potruch.com

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